

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF COLUMBIA GAS OF)	CASE NO.
KENTUCKY, INC. FOR AN ADJUSTMENT)	2016-00162
IN RATES)	

ORDER

This matter arises upon Direct Energy Business Marketing, LLC's ("Direct Energy") August 11, 2016 motion to reconsider ("Motion to Reconsider") the Commission's July 21, 2016 Order denying intervention. In its Motion to Reconsider, Direct Energy asserts that the Commission mischaracterized it as a competitor of Columbia Gas of Kentucky, Inc. ("Columbia") and failed to consider Direct Energy's interest in this case, directly and as an agent for its customers. In support, Direct Energy points to the authorization it has received from one of its customers that is also a Columbia ratepayer, Color Point, LLC ("Color Point"), to represent Color Point's interest in this proceeding.¹

In Columbia's objection and response to Direct Energy's Motion to Reconsider ("Objection and Response"), Columbia requests that the Commission deny Direct Energy's Motion to Reconsider, asserting that Direct Energy has raised no new issues

¹ Accompanying its Motion to Reconsider, Direct Energy filed the affidavit of Art Vanwingerden, managing member of Color Point. Therein, Mr. Vanwingerden stated that Direct Energy serves as Color Point's agent, administratively and operationally, to contract with Columbia for delivery services and to interact with Columbia to effectuate delivery of natural gas. Mr. Vanwingerden further stated that in this proceeding, Columbia has proposed changes to its transportation program tariff that will impact both Direct Energy and Color Point, and that Color Point has appointed Direct Energy as an agent and attorney in fact to advance its interests in this proceeding and, more specifically, to inform the Commission regarding the impact of Columbia's proposed tariff revision to the Deliveries of Customer-Owned Gas Section of P.S.C. Ky. No. 5. First Revised Sheet No. 89.

supporting its request for intervention and that the Commission's Order denying intervention² was correct. In Direct Energy's reply to the Objection and Response of Columbia Gas ("Reply"), Direct Energy reiterates its assertion that it is not a competitor of Columbia, reasserts the potential impact of this proceeding on it and its customers, and emphasizes the authorization it has received from Color Point to represent its interests in this proceeding.

Recently in this case, the Commission denied the motion to reconsider the denial of intervention filed by Interstate Gas Supply, Inc. ("IGS").³ Therein, the Commission reaffirmed its finding that IGS, as a gas marketer or supplier, is a competitor of Columbia. The Commission noted that it has previously denied intervention to gas marketers and suppliers such as IGS on grounds that they are competitive suppliers of natural gas, and that they are not customers of the utility. The same rationale applies to Direct Energy.

For example, in Case No. 2011-00124,⁴ a transfer of control (merger) case, the Commission denied Stand Energy Corporation ("Stand Energy") intervention on the grounds that Stand Energy did not receive electric or natural gas service from Duke Energy Kentucky, Inc. ("Duke Kentucky") and that Stand Energy is not a customer of Duke Kentucky, but is instead a competitive supplier of retail natural gas. Like IGS and Direct Energy, Stand Energy is a gas supplier. In that case, the Commission found that

² Order (Ky. PSC July 21, 2016).

³ *Id.*

⁴ Case No. 2011-00124, *Joint Application of Duke Energy Corporation, Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Diamond Acquisition Corporation, and Progress Energy, Inc. for Approval of the Indirect Transfer of Control of Duke Energy Kentucky, Inc.* (Ky. PSC May 12, 2011), Order.

“the only interest that Stand Energy arguably has in the natural gas rates and service of Duke Kentucky is as a competitor, and even that interest is too remote to justify intervention here.”⁵ We applied that same rationale, gleaned from prior precedent, in denying Direct Energy intervention in this case.

More recently, in Case No. 2012-00136,⁶ a pipeline replacement rider case, the Commission again denied Stand Energy intervention because Stand Energy did not receive natural gas service from Delta Natural Gas Company, Inc. (“Delta”) and was not a customer of Delta, but was rather a competitive supplier of natural gas. Noteworthy in that case is that Stand Energy petitioned the Commission for reconsideration for the sole purpose of clarifying what Stand Energy claimed was the Commission’s mischaracterization of Stand Energy as a “competitor” of Delta. Upon review, the Commission reaffirmed its Order denying intervention, as well as its finding that, as a gas marketer, Stand Energy was indeed a competitor of Delta.

Direct Energy asserts that it has received authorization from one of its customers, Color Point, to represent Color Point’s interest in this proceeding. However, the Commission has previously denied intervention to Stand Energy in the 2001 rate case of The Union Light, Heat and Power Company (“ULH&P”) under similar circumstances.⁷ There, we stated:

[Stand Energy] first states that it has an industrial natural gas customer that is currently served under ULH&P’s Interruptible Transportation (“IT”) tariff and it seeks to protect

⁵ *Id.* at 4.

⁶ Case No. 2012-00136, *An Adjustment of the Pipe Replacement Program Rider of Delta Natural Gas Company, Inc.* (Ky. PSC June 25, 2012), Order.

⁷ Case No. 2001-092, *Adjustments of Gas Rates of the Union, Light, Heat and Power Company* (Ky. PSC Sept. 13, 2001), Order.

the interests of this industrial customer. [Stand Energy] asserts that its interest in representing its industrial customer is unique and thus that it has an interest in these proceedings that is not otherwise adequately represented. The Commission finds that the interest claimed by [Stand Energy] is actually that of ULH&P's IT customer and that it cannot be asserted by [Stand Energy]. The Commission further finds that the interest of all customers of ULH&P, including its IT customers, is adequately represented by the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("Attorney General"), who has intervened as a party for that purpose.⁸

Columbia argues that Color Point is likewise represented by the Attorney General in this case and does not need to be represented by Direct Energy. Direct Energy maintains that its interests are not aligned with those of the Attorney General and, in support, cites to Columbia's 2009 rate case, in which the Attorney General filed comments in support of the full intervention of Constellation New Energy-Gas Division, LLC ("CNEG"), a gas supplier of Columbia.⁹ Specifically, Direct Energy points to the Attorney General's comment likening CNEG to the CAC, AARP, and Sierra Club "in that the company [CNEG] has a relationship with its customers and those customers may potentially benefit from the position or arguments which CNEG may advance in this case."¹⁰

Direct Energy also likens itself to Kentucky Industrial Utility Customers, Inc. ("KIUC"), which has been granted intervention in this case. Direct Energy argues that

⁸ *Id.* at 2. Note: The quoted material referred to Stand Energy as "SEC" throughout. Here, for consistency of terms within the instant Order, [Stand Energy] substitutes for "SEC."

⁹ Case No. 2009-00141, *Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates* (Ky. PSC July 20, 2009), Attorney General's Comments Regarding Motion of Constellation New Energy-Gas Division, LLC for Full Intervention (July 14, 2009) at 2.

¹⁰ *Id.* at 1.

like KIUC, it has been specifically authorized by a transport customer to represent its particular interest in this proceeding. Direct Energy further asserts that neither KIUC nor the Attorney General has the same goals and interests as Direct Energy, and no other party has the same gas-supply needs as its customer, Color Point. As a result, Direct Energy urges the Commission to allow it to intervene.

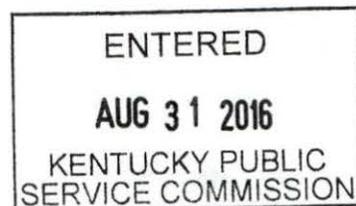
Conversely, Columbia contends that Direct Energy and KIUC are not similarly situated, and that the Commission's grant of intervention to KIUC in this case does not mandate similar treatment for Direct Energy. Columbia asserts that KIUC is a Kentucky non-profit corporation and its identified customers, AK Steel Corporation and Toyota Motor Manufacturing, Kentucky, Inc., are members of KIUC. Therefore, Columbia argues that KIUC would naturally be permitted to represent its members. Columbia distinguishes KIUC from Direct Energy by emphasizing that Direct Energy is a for-profit foreign limited liability company, and nothing indicates that its customers are among its members. Columbia asserts that Direct Energy, like Stand Energy in the 2001 ULH&P rate case, should not be permitted to represent its customers in this proceeding.

The Commission finds that Direct Energy, as a gas supplier and marketer, has a financial interest separate and apart from the interests of the transportation customers who purchase gas from Direct Energy. This financial interest of Direct Energy arises not from its status as a customer of Columbia, but as a competitor of Columbia. Unlike Direct Energy, KIUC is a trade association representing only the interests of its members that chose to participate in this case. Thus, Direct Energy is not similar to KIUC. Direct Energy has not articulated a special interest in this proceeding that is not otherwise adequately represented by other parties, nor is it likely to present issues or

develop facts that will assist the Commission in fully considering this case without unduly complicating or disrupting the proceedings. While the Commission's Order granting CNEG intervention in Columbia's 2009 rate case may appear to contradict the Commission's Order denying Stand Energy intervention in the 2001 ULH&P rate case, more recent Commission Orders, as discussed in our recent Order denying IGS's motion to reconsider in this case, have found a sufficient basis for denying intervention to gas suppliers and marketers such as Direct Energy on grounds that they are competitors of the utility.¹¹ Based on a review of the record and being otherwise sufficiently advised, the Commission finds that Direct Energy's Motion to Reconsider should be denied.

IT IS THEREFORE ORDERED that Direct Energy's Motion to Reconsider is denied.

By the Commission



ATTEST:


Executive Director

¹¹ See e.g., Case No. 2012-00136, *Delta Natural Gas Company, Inc.* (Ky. PSC June 25, 2012), Order denying Stand Energy intervention; and Case No. 2011-00124, *Duke Energy Corporation et. al.* (Ky. PSC May 12, 2011), Order denying Stand Energy intervention.

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